



# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

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October 28, 2004

IN REPLY PLEASE

REFER TO FILE: WM-7

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**SANTA MONICA BAY BACTERIA TOTAL MAXIMUM DAILY LOAD  
MEMORANDA OF AGREEMENT  
JURISDICTIONAL GROUPS 2, 3, 5, AND 6  
SUPERVISORIAL DISTRICTS 2, 3, AND 4  
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY  
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

1. Approve and instruct the Chairman of the Board to execute the enclosed Memorandum of Agreement with the California Department of Transportation (Caltrans) and the Cities of Los Angeles, Santa Monica, and El Segundo to develop a Bacteria Total Maximum Daily Load (TMDL) Implementation Plan for Jurisdictional Groups 2 and 3 (Enclosure A) with the District's contribution toward the cost of the implementation plan not to exceed \$15,000 from the Fiscal Year 2004-05 Flood Control District Budget.
2. Approve and instruct the Chairman of the Board to execute the enclosed Memorandum of Agreement with Caltrans and the Cities of Redondo Beach, Manhattan Beach, Torrance, Hermosa Beach, and El Segundo to develop a Bacteria TMDL Implementation Plan for Jurisdictional Groups 5 and 6 (Enclosure B) with the District's contribution toward the cost of the implementation plan not to exceed \$5,000 from the Fiscal Year 2004-05 Flood Control District Budget.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

These agreements provide collaborative efforts in developing implementation plans to comply with requirements of the California Regional Water Quality Control Board, Los Angeles Region, Wet-Weather Bacteria TMDL for the Santa Monica Bay beaches. A collaborative effort in developing implementation plans will result in more effective strategies to improve water quality, take advantage of economy of scale, and provide closer partnerships in sharing resources and information.

On July 15, 2003, the Santa Monica Bay Beaches Wet-Weather Bacteria TMDL became effective. The TMDL designates the County of Los Angeles and the District as responsible agencies along with other jurisdictions that drain to the Santa Monica Bay. In the TMDL, the Santa Monica Bay is divided into seven jurisdictional groups that encompass each of the 27 coastal subwatersheds draining into Santa Monica Bay. Each of the seven jurisdictional groups is composed of a designated lead agency (based on land area) plus a number of responsible agencies.

The TMDL requires each jurisdictional group to submit a draft implementation plan by March 30, 2005. In order to comply with this deadline, Jurisdictional Groups 2 and 3 informally combined to jointly develop an implementation plan. This effort is being led by the City of Los Angeles and includes the Cities of Santa Monica and El Segundo, the County, the District, and Caltrans as responsible agencies. Jurisdictional Groups 5 and 6 also informally combined their compliance efforts under the leadership of the City of Redondo Beach. This effort includes Manhattan Beach, Torrance, Hermosa Beach, El Segundo, the County, the District, and Caltrans as responsible agencies.

These jurisdictional groups have adopted a cost-sharing formula based on each agency's percentage of jurisdictional land area. The County has jurisdiction over a very small percentage of land use, and the District has jurisdiction over an extensive flood control system consisting of storm drains and channels and pump stations in all four jurisdictions.

### **Implementation of Strategic Plan Goals**

This action meets the County Strategic Plan Goals of Fiscal Responsibility by developing a partnership to effectively manage our resources and Organizational Effectiveness due to cross-jurisdictional collaboration.

### **FISCAL IMPACT/FINANCING**

The total cost to the District to develop the implementation plan for Jurisdictional Groups 2 and 3 is \$15,000 and for Jurisdictional Groups 5 and 6 is \$5,000. Both cost estimates include a contingency of approximately 10 percent for unforeseen changes in work. There will be no impact to the County's General Fund. Sufficient funds are available in the Fiscal Year 2004-05 Flood Control District Budget.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The Regional Board requires each jurisdictional group to submit an implementation plan for review and approval. The District and the County are required to comply with this TMDL along with the other responsible agencies named above.

The enclosed agreements have been reviewed and approved as to form by County Counsel.

### **ENVIRONMENTAL DOCUMENTATION**

Execution of the enclosed agreements is statutorily exempt under the provisions of the California Environmental Quality Act pursuant to Section 15262 of the State California Environmental Quality Act Guidelines. Any future project that may be proposed for construction or implementation will undergo the appropriate environmental review.

### **CONTRACTING PROCESS**

Not applicable.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Approval of these agreements will have no adverse impact on the current level of services provided by the District or the County.

The Honorable Board of Supervisors  
October 28, 2004  
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## **CONCLUSION**

Please return 18 approved originals for Jurisdictional Groups 2 and 3 and 15 approved originals for Jurisdictional Groups 5 and 6. This MOA is being adopted/executed simultaneously by each member of Jurisdictional Groups 2 and 3 and 5 and 6.

Once we receive all of the executed signature pages from the different jurisdictional groups, we will send these pages to the Executive Office to complete the adopted package.

Respectfully submitted,

DONALD L. WOLFE  
Interim Director of Public Works

SR:kk

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Enc. 2

cc: Chief Administrative Office  
County Counsel  
Department of Beaches and Harbors (Joseph Chesler)  
Department of Parks and Recreation

## **MEMORANDUM OF AGREEMENT**

### **SANTA MONICA BAY WET WEATHER BACTERIA TMDL IMPLEMENTATION JURISDICTIONAL GROUPS TWO AND THREE**

This Memorandum of Agreement ("MOA") is made and entered into as of the date of the last Party signature set forth below by and among the City of Los Angeles, a body corporate and politic ("Los Angeles"); the City of Santa Monica, a body corporate and politic ("Santa Monica"); the County of Los Angeles, a political subdivision of the State of California ("County"); the City of El Segundo, a body corporate and politic ("El Segundo"); and the State of California, through its Department of Transportation ("Caltrans"); (individually "Party" and collectively, "Parties"), with respect to the following:

**Whereas**, on March 19, 2003, the State Water Resources Control Board approved Resolution No. 2002-022 ("Resolution 2002-022") adopted by the California Regional Water Quality Control Board, Los Angeles Region ("RWQCB") establishing the limit for the Total Maximum Daily Loads for bacteria during wet weather for Santa Monica Bay Beaches ("Bacteria TMDL"), a true and correct copy of which is attached as Exhibit A hereto and incorporated herein; and

**Whereas**, the TMDL became effective on July 15, 2003; and

**Whereas**, the Bacteria TMDL is not self-executing and has not been incorporated into the National Pollutant Discharge Elimination System Permit regarding Waste Discharge Requirements For Municipal Stormwater and Urban Runoff Discharges Within the County of Los Angeles, and the Incorporated Cities therein, except the City of Long Beach, dated December 13, 2001 ("NPDES Permit") in the manner required by be enforceable; and

**Whereas**, the TMDL addresses documented bacteriological water quality impairments at 44 beaches from the Los Angeles/Ventura County line (to the northwest) to Outer Cabrillo Beach (just south of the Palos Verdes Peninsula); and

**Whereas**, in addition to establishing TMDLs for Santa Monica Bay, Resolution 2002-022 also: (1) divided Santa Monica Bay into seven jurisdictional groups; (2) assigned communities and other responsible jurisdictions to these seven jurisdictional groups; (3) assigned lead agencies ("Primary Jurisdictions") for each jurisdiction; and (4) identified Responsible Agencies within those Jurisdictional Groups who are to submit implementation plans outlining how the Jurisdictional Groups intend to comply with the Bacteria TMDL; and

**Whereas**, each of these seven jurisdictions is comprised of a group of associated sub-watersheds. Jurisdiction Two consists of an area comprising the Castlerock, Santa Ynez Canyon, Pulga Canyon, Santa Monica Canyon, and Dockweiler subwatersheds. Jurisdiction Two includes the following agencies: the City of Los Angeles, the City of El Segundo, the City of Santa Monica, the County of Los Angeles, the California Department of Transportation ("Caltrans"), and the California Department of Parks and Recreation. The City of Los Angeles is the "primary jurisdiction" ("Primary Jurisdiction") for Jurisdiction Two. Jurisdiction Three consists of the Santa Monica subwatershed and includes the following agencies: the City of

Santa Monica, the City of Los Angeles, the County of Los Angeles, Caltrans, and the California Department of Parks and Recreation. The City of Santa Monica is the “primary jurisdiction” (“Primary Jurisdiction”) for Jurisdiction Three; and

**Whereas**, for the purposes of implementing the TMDLs, Resolution 2002-022 defines “responsible jurisdictions and agencies” as: (1) local agencies that are responsible for discharges from a publicly owned treatment works to the Santa Monica Bay watershed or directly to the Bay; (2) local agencies that are permittees or co-permittees on a municipal storm water permit; (3) local or state agencies that have jurisdiction over a beach adjacent to Santa Monica Bay; and (4) the California Department of Transportation. Resolution 2002-022 additionally defines “primary jurisdiction” as the jurisdiction comprising greater than fifty percent (50%) of the land area in a defined sub-watershed; and

**Whereas**, the Parties identified herein as comprising for Jurisdictional Groups Two and Three, are willing to enter into this MOA to set forth their willingness to enter into a cooperative agreement to devise voluntary implementation plans consistent with the provisions of the Bacteria TMDL, including the submission of a written draft implementation plan no later than twenty (20) months after the effective date of the Bacteria TMDL (“Draft Implementation Plan”) and a final written report (“Final Implementation Plan”) no later than two (2) years after the effective date of the Bacteria TMDL (collectively “Implementation Plan”); and

**Whereas**, while the TMDL identifies the California Department of Parks and Recreation as a responsible agency in Jurisdictional Group Two and Three, given its jurisdiction over State Beaches within the boundaries of these Jurisdictional Groups, the California Department of Parks and Recreation has elected to develop its own implementation plan for complying with the Bacteria TMDL; and

**Whereas**, the Parties agree that the Implementation Plan to be submitted on behalf of the Parties shall adopt the “Integrated Water Resources approach” (“IWR Approach”) that will be consistent with the provisions of the Bacteria TMDL, wherever technically, politically, and economically feasible, which provides for final compliance within no more than 18 years after the effective date of the Bacteria TMDL. The Parties understand the IWR Approach to be one that not only seeks compliance with the Bacteria TMDL, but also remedies other water quality impairments in the area, as well as other public works needs, but also need not include groundwater recharge and the reuse of storm runoff; and

**Whereas**, to facilitate a coordinated, cooperative and cost-effective voluntary program that is consistent with the Bacteria TMDL, the Parties have agreed to contribute funds to Los Angeles who will to contract with a Consultant for the preparation of the Implementation Plan, and any incidental documents to achieve the goals of this MOA. The Parties agree that the formula, set forth in Exhibit "C" will be used to calculate each of the Parties’ share of financial contribution to prepare the Implementation Plan, and any incidental documentation thereto; and

**NOW, THEREFORE**, in consideration of the mutual benefits and promises made herein, the Parties do hereby agree as follows:

## AGREEMENT

### ARTICLE I – Purpose of MOA and Nature of Implementation Plan

#### **Purpose of MOA –**

**A.** The Parties agree that the purposes of this MOA is to cooperatively and voluntarily devise and jointly fund an implementation program that is consistent with the provisions of the Bacteria TMDL which will include the development and submittal of a Draft Implementation Plan by March 15, 2005, and a Final Implementation Plan by July 15, 2005 and to share the costs associated with the development of that Implementation Plan. The Parties agree to apply the IWR Approach to the Implementation Plan as described in the Bacteria TMDL.

**B.** The Parties desire to cooperate with each other to voluntarily develop a coordinated Implementation Plan that employs an IWR Approach for both Jurisdictional Groups Two and Three. The Parties further desire to set forth their respective duties and obligations under this MOA with respect to the voluntary development and submittal of the Implementation Plan and to contribute to Los Angeles, the Primary Jurisdiction for Jurisdiction Two, funds to contract with a third party for the development, preparation and submittal of the Implementation Plan and any incidental documentation consistent with the Bacteria TMDL. The Parties also agree on a formula by which to calculate each of the Parties' financial contribution to prepare the Implementation Plan.

**C.** This MOA is voluntarily entered for the development of a cost effective and a well-coordinated Implementation Plan consistent with the provisions of the Bacteria TMDL, to establish the roles of the Parties to prepare the Implementation Plan, and to address the cost sharing among the Parties for the retention of a consulting team by Los Angeles for the development of an Implementation Plan that is consistent with the goals of Jurisdictional Groups Two and Three and the Bacteria TMDL.

**2. “Maximum Extent Practicable” Standard** – Nothing in this MOA, nor the Work, nor any activity approved or carried out by the Parties hereunder, shall be interpreted as a waiver of the position that the efforts to be undertaken by the Parties are subject to the “Maximum Extent Practicable” standard set forth in the Clean Water Act (33U.S.C. Section 1251 et seq.)

### ARTICLE II– CONTRACTING AND FUNDING

**1. Contracting** – The Parties agree that Los Angeles will contract with the Joint Venture of CH2M Hill, Inc. and Camp Dresser & McKee, Inc. (CH:CDM) to assist with the development of an Implementation Plan that is consistent with the goals of the Jurisdictional Groups Two and Three and consistent with the Bacteria TMDL. Los Angeles' contract with the consultant shall incorporate Los Angeles contracting requirements and policies. The contract shall recite, however, that while it is for the benefit of all of the Parties CH-CDM shall look solely to Los Angeles for payment. Further, the contract shall recite that funds were contributed to Los Angeles by the Parties in the amounts agreed to by the Parties herein. The Los Angeles' contract

with CH-CDM shall also provide that Los Angeles may terminate said contract upon sixty (60) days written notice.

**2. Administration of Consultant** – Los Angeles shall be responsible for coordinating the activities of CH:CDM to ensure that the Implementation Plan and all related deliverables, to be specified in a Scope of Work agreed upon by the Parties in the manner provided herein, are being delivered on time and within budget.

**3. Funding Agreements –**

a. The Parties hereby agree to share the costs of the Implementation Plan based on the percentage of land area within the jurisdictional boundaries of each Party that is within the combined Jurisdictional Groups Two and Three. The breakdown of landmass by agency and the exact share for each Party is set forth in Exhibit C, attached hereto and incorporated herein by this reference. Any funding arrangement reached by the Parties shall apply to the tasks set forth in Article 1, Section 1, above, and shall not extend to any actual implementation of the Implementation Plan. All Parties agree that the total cost to prepare and submit the Implementation Plan, and any incidental documents thereto, shall not exceed \$782,000 unless express written consent is obtained from all Parties to amend this MOA to increase the total authorized cost.

b. **Caltrans Funding** – Caltrans funding encumbered under this MOA is evidenced by the signature of its District Budget Manager certifying as to funds in the maximum sum of \$6,025 having been allocated and encumbered to Caltrans share of the Work costs. Any cost to be invoiced above this sum will require an amendment to this MOA.

**4. Invoice and Payment** – Upon contract execution with CH:CDM, all costs for the Implementation Plan that to be completed are to be shared as set forth in Exhibit C. Fifty percent (50%) of each Party's share of cost for the consultant is due and payable to Los Angeles from each Party upon execution of this MOU and the remaining fifty percent (50%) is due in March 2005. Los Angeles will invoice the Parties and payment shall be made within forty five (45) days of receipt of the invoice.

**ARTICLE III – Organization**

**1. Meetings** – The Parties agree that their Representatives (as defined below) shall meet, at a minimum, once per month to discuss the development, preparation and submittal of the Implementation Plan (“Work Meetings”). The attendees at Work Meetings shall attempt to meet in person, although teleconference meetings may be held upon agreement of the Parties. Work Meetings shall be held at the Bureau of Sanitation, Watershed Protection Division facility, 2714 Media Center Drive, Los Angeles, CA 90065, or at such other locations as determined by the Parties. The Chair shall distribute a written agenda at least two (2) business days prior to the date of a Work Meeting, except in the case of an Emergency Meeting. The Chair or any two (2) Parties may call an Emergency Meeting of the Parties. An Emergency Meeting is defined as an urgent meeting to discuss issues that require immediate action or attention of the Parties and



which must be resolved prior to the date of the next scheduled Work Meeting. Emergency Meetings may be attended in person or by teleconference upon 24 hours notice to the Parties.

**2. Quorum** – Attendance or participation via teleconference at a Work Meeting or an Emergency Meeting by at least three (3) Parties shall constitute a quorum effective to conduct business, except that in no case shall a quorum exist in the absence of a representative from Los Angeles or Santa Monica.

**3. Representatives** – Each of the Parties shall appoint a single voting representative (“Representative”) and one or more alternates to vote at the Work Meeting or Emergency Meetings, although other representatives of the Parties may also attend. The name of each of the Parties’ Representative is set forth in Exhibit B, but the Parties may each designate alternate Representatives to act on its behalf by providing written or e-mail notice to the Chair 24 hours before the Work Meeting or Emergency Meeting. A Representative from each of the Parties must attend every scheduled Work Meeting or Emergency Meeting, except that any of the Parties that will be absent from a Work Meeting or Emergency Meeting may appoint in writing another Parties’ Representative to act as its proxy, with full power to vote as directed by the absent Party. Any such proxy arrangement shall be memorialized in a writing or electronic mail transmitted to the Chair 24 hours prior to the date of the Work or Emergency Meeting.

**4. Chair** – The Representative from Los Angeles is designated as the Chair of the Work Meetings and Emergency Meetings. In addition to the individual appointed Chair, the alternate Chair shall be Santa Monica, who will serve in the absence of the Chair. The Chair or acting Chair shall be the lead to provide communications made on behalf of the combined Parties to the RWQCB or other third parties. All written communications shall be copied to all Parties to MOA.

**5. Information Sharing** – The Parties mutually agree to share, to the extent not otherwise prohibited by law or by legal or trade secret privilege, all information required to develop, prepare, and submit documents for the Implementation Plan, including monitoring data, CADD and GIS or other electronic data. Such sharing shall be subject to any applicable license agreements or other restrictions. All data shared among the Parties shall be provided “as is” and without warranties as to accuracy or as to any other characteristics, whether expressed or implied. The intent of this data-sharing provision is to facilitate the development of the Implementation Plan, and the Parties agree not to use such data for tasks unrelated to the Implementation Plan.

**6. Voting** – Any actions taken at any meeting shall be approved by a simple majority of the voting power cast by the Representatives, either acting on behalf of their Party or for another Party through a properly noticed proxy. Each Party shall be bound as to any action taken by the Parties at a Work Meeting or Emergency Meeting, whether that Party was present or absent from the Work Meeting or Emergency Meeting.

**7. Subcommittees** – The Parties may appoint such subcommittees, as they believe appropriate and useful to conduct the work set forth in this MOA, except that any actions to be

taken by the Parties shall be voted on by the Representatives at the Work Meetings or Emergency Meetings.

8. **Minutes** – Los Angeles and Santa Monica shall alternatively draft and distribute written minutes of all meetings. The minutes of all Work Meetings and Emergency Meetings shall be distributed to the Representatives of the Parties by email or at the addresses designated in Exhibit B.

9. **a. Grant of Mutual Access Rights** – During the term of this MOA, each of the Parties except Caltrans hereby grants to the other Parties the right of access and entry to all storm drains, creeks, beaches, and existing monitoring stations at beaches subject to this MOA (the “Property”) at all reasonable times for the purpose of discharging the duties and obligations described in this MOA. Prior to exercising said right of entry, the entering Party shall provide reasonable written notice to the Party who owns the Property. For the purposes of this provision, written notice shall include notice delivered via email. All notices provided pursuant to this Article shall be delivered to the Party Representative at least 48 hours in advance of entry onto the Property and must receive confirmation from the Party that entry may proceed onto the Property. The Parties shall indemnify, defend and hold harmless each other, their Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert fees), arising from or connected with the entry onto the Property and Work performed on said Property.

**b. Access to Caltrans Facilities** – Any Party intending to enter onto a Caltrans right of way shall first make a written request to the Caltrans party listed in Exhibit B, identifying the site location, extent of access by persons (and equipment if any), dates and times of entry, as well as an explanation of the purpose of that entry. Caltrans will thereafter determine, within ten (10) working days, if that entry will be allowed without a formal encroachment permit issued by the District Permit Engineer as an authorized presence of non-Caltrans parties not interfering with or threatening the safety of the traveling public or the integrity of the Caltrans' infrastructure. In such case, Caltrans will condition that right of entry on the accompaniment of a Caltrans representative who shall be empowered to restrict or limit the access of those permittees as deemed necessary, at the sole discretion of Caltrans. Where adverse impacts to traffic or the traveled way can be anticipated by Caltrans, Caltrans may require the applicant Party to submit a formal encroachment permit application, to be filed and completed together with Traffic Control Plans when necessary (which must be prepared by or under the supervision of a traffic engineer licensed in the State of California) with the District Permit Engineer. An encroachment permit may require as much as six (6) weeks to be issued depending upon the extent of coordination and development of traffic controls required for that access.

#### **ARTICLE IV – GENERAL PROVISIONS**

1. **Notices** – Any notices, bills, invoices, or reports relating to this MOA, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representatives of the Parties at the addresses set forth in Exhibit B attached hereto. Written notice shall include notice delivered via email. A notice shall be

deemed to have been received on (a) the day of delivery, if delivered by hand during regular business hours or by confirmed facsimile or by confirmed email; or (b) on the third business day following deposit in the United States mail, postage prepaid to the addresses set forth in Exhibit B attached hereto.

**2. Relationship of the Parties** – The Parties are, and shall at all times remain as to each other, wholly independent entities. No Party to this MOA shall have power to incur any debt, obligation, or liability on behalf of any other Party unless expressly provided to the contrary by this MOA. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.

**3. Administration** – For the purposes of this MOA, the Parties hereby designate as their respective Party Representatives the persons named in Exhibit B. The designated Party Representatives, or their respective designees, shall administer the terms and conditions of this MOA on behalf of their respective Party. Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this MOA on behalf of such Party.

**4. Cooperation, Further Acts** – The Parties shall cooperate fully with one another to attain the purposes of this MOA.

**5. Amendments** – This MOA may be amended by simple majority vote of the voting power of the Parties, except that the terms of any proposed amendment shall be transmitted in writing to the Chair at least thirty (30) days prior to the date of a Work Meeting or, if the proposed amendment is to be considered at an Emergency Meeting, the terms of such amendment shall be transmitted in writing to the Chair at least five (5) business days prior to the date of the Emergency Meeting. To be effective, all amendments must be in written form and executed by all Parties.

**6. Execution of Counterparts** – This MOA may be executed simultaneously in counterpart, each of which shall be deemed an original, but together, shall constitute but one and the same instrument.

**7. Effective Date** – The effective date (“Effective Date”) of this MOA shall be the date of the last Party’s signature. This MOA shall be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of each Responsible Agency.

**8. Terms of Termination** – This MOA shall continue in effect for three years following execution of this Agreement unless earlier terminated in writing by all of the Parties.

**9. Withdrawal from MOA** – A Responsible Agency may withdraw from this MOA upon 60 days written notice to the Parties. The withdrawing Party will forfeit the 50% paid at the time this MOA is executed, as denoted in the terms of Section 4, Article II. The remaining cost shares and additional cost shares resulting from the withdrawal of a Party will be distributed among the remaining Parties according to their proportional cost share as set forth in Exhibit C. All Parties understand, acknowledge, and agree that withdrawal from the MOA shall terminate any responsibility, liability or obligation resulting from this MOA commencing from the date of

withdrawal. A Party who withdraws from the Agreement shall remain liable for any loss, debt, liability otherwise incurred while participating in this Agreement.

**10. Special Provisions for Caltrans' Delay in Appropriation of Funds** – All obligations of Caltrans under the terms of this agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission. This MOA has been written before ascertaining the availability of federal or state legislative appropriation of funds, for the mutual benefit of the Parties in order to avoid program and fiscal delays that would occur if the MOA was executed after that determination was made.

This MOA is valid and enforceable as to Caltrans as if sufficient funds have been made available to Caltrans by the United States Government or California State Legislature for the purposes set forth in this MOA. If the United States Government or the California State Legislature does not appropriate sufficient funds for Caltrans to participate in this MOA, this MOA may be amended in writing by the Parties to reflect any agreed upon reduction in the percentage of funds contributed by Caltrans to continue its participation in this MOA. Caltrans, however, has the option to withdraw from this MOA in the event sufficient funds are not appropriated for Caltrans.

Should Caltrans exercise its option to withdraw from this MOA, Caltrans shall remain responsible for its share of liability, if any, incurred while participating in this MOA.

**11. Indemnification** – Each Party shall indemnify, defend, and hold harmless each other Party, including its Special Districts, elected and appointed officers, agents and employees, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the acts arising from and/or relating to this MOA.

**12. Governing Law** – This MOA is governed by, interpreted under and construed and enforced in accordance with the laws of the State of California

**13. Severability** – If any provision of this MOA shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of this MOA shall not be affected and this MOA shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this MOA.

**IN WITNESS WHEREOF**, the Parties to this MOA have caused this MOA to be executed on their behalf, respectively, as follows:

**CITY OF LOS ANGELES**

By: \_\_\_\_\_  
Valerie Lynne Shaw, President  
Board of Public Works

ATTEST:

\_\_\_\_\_  
J. Michael Carey  
City Clerk

APPROVED AS TO FORM:

Rockard J. Delgadillo  
City Attorney

By: \_\_\_\_\_  
Christopher M. Westhoff  
Assistant City Attorney

**CITY OF SANTA MONICA**

By: \_\_\_\_\_  
Susan McCarthy, City Manager

ATTEST:

\_\_\_\_\_  
Maria Stewart, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marsha Jones Moutrie, City Attorney

COUNTY OF LOS ANGELES

COUNTY OF LOS ANGELES  
Acting for itself and on behalf of the  
Los Angeles County Flood Control District

By: \_\_\_\_\_  
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Board Supervisors of  
the County of Los Angeles

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

OFFICE OF THE COUNTY COUNSEL

By:   
Deputy

**CITY OF EL SEGUNDO**

By: \_\_\_\_\_  
Mary Strenn, City Manager

ATTEST:

\_\_\_\_\_  
Cindy Mortesen  
City Clerk

APPROVED AS TO FORM:

Mark D. Hensley, City Attorney

\_\_\_\_\_  
Karl H. Berger  
Assistant City Attorney



**STATE OF CALIFORNIA**  
**Department of Transportation**

\_\_\_\_\_  
Tony V. Harris  
Director of Transportation, Acting

By: \_\_\_\_\_  
Douglas R. Failing  
District Director

APPROVED AS TO FORM & PROCEDURE

\_\_\_\_\_  
William B. Bassett  
Attorney

CERTIFY AS TO FUNDS

By: \_\_\_\_\_  
District Budget Manager

CERTIFY AS TO FINANCIAL TERMS AND CONDITIONS:

By: \_\_\_\_\_  
Accounting Administrator

**EXHIBIT A – Copy of  
Resolution 2002-022**

**State of California  
California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION NO. 2002-022  
December 12, 2002**

**Amendment to the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to Incorporate Implementation Provisions for the Region's Bacteria Objectives and to Incorporate a Wet-Weather Total Maximum Daily Load for Bacteria at Santa Monica Bay Beaches**

**WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:**

1. The federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) to develop water quality standards which include beneficial use designations and criteria to protect beneficial uses for each water body found within its region.

The Regional Board carries out its CWA responsibilities through California's Porter-Cologne Water Quality Control Act and establishes water quality objectives designed to protect beneficial uses contained in the Water Quality Control Plan for the Los Angeles Region (Basin Plan).

3. Section 303(d) of the CWA requires states to identify and to prepare a list of water bodies that do not meet water quality standards and then to establish load and waste load allocations, or a total maximum daily load (TMDL), for each water body that will ensure attainment of water quality standards and then to incorporate those allocations into their water quality control plans.
4. Many of the beaches along Santa Monica Bay were listed on California's 1998 section 303(d) list, due to impairments for coliform or for beach closures associated with bacteria generally. The beaches appeared on the 303(d) list because the elevated bacteria and beach closures prevented full support of the beaches' designated use for water contact recreation (REC-1).
5. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete TMDLs for all the Los Angeles Region's impaired waters within 13 years. A schedule was established in the consent decree for the completion of 29 TMDLs within 7 years, including completion of a TMDL to reduce bacteria at Santa Monica Bay beaches by March 2002. The remaining TMDLs will be scheduled by Regional Board staff within the 13-year period.
6. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (e.g., USEPA, 1991). A TMDL is defined as "the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background" (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at "levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations

and water quality" (40 CFR 130.7(c)(1)). The provisions in 40 CFR 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters.

7. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). The Basin Plan and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
8. Santa Monica Bay is located in Los Angeles County, California. The proposed TMDL addresses documented bacteriological water quality impairments at 44 beaches from the Los Angeles/Ventura County line, to the northwest, to Outer Cabrillo Beach, just south of the Palos Verdes Peninsula.
9. The Regional Board is establishing the above-mentioned TMDL to preserve and enhance the water quality at Santa Monica Bay beaches and for the benefit of the 55 million beachgoers, on average, that visit these beaches each year. At stake is the health of swimmers and surfers and associated health costs as well as sizeable revenues to the local and state economy. Estimates are that visitors to Santa Monica Bay beaches spend approximately \$1.7 billion annually.
10. The Regional Board's goal in establishing the above-mentioned TMDL is to reduce the risk of illness associated with swimming in marine waters contaminated with bacteria. Local and national epidemiological studies compel the conclusion that there is a causal relationship between adverse health effects, such as gastroenteritis and upper respiratory illness, and recreational water quality, as measured by bacteria indicator densities. The water quality objectives on which the TMDL numeric targets are based will ensure that the risk of illness to the public from swimming at Santa Monica Bay beaches generally will be no greater than 19 illnesses per 1,000 swimmers, which is defined by the US EPA as an "acceptable health risk" in marine recreational waters.
11. Interested persons and the public have had reasonable opportunity to participate in review of the amendment to the Basin Plan. Efforts to solicit public review and comment include staff presentations to the Santa Monica Bay Restoration Project's Bay Watershed Council and Technical Advisory Committee between May 1999 and October 2001 and creation of a Steering Committee in July 1999 to provide input on scientific and technical components of the TMDL with participation by the Southern California Coastal Water Research Project, City of Los Angeles, County of Los Angeles Department of Public Works, County Sanitation Districts of Los Angeles County, Heal the Bay, and Santa Monica Bay Restoration Project.
12. A first draft of the TMDL for bacteria at Santa Monica Bay beaches was released for public comment on November 9, 2001; an interim draft TMDL covering wet weather only was released on June 21, 2002, for discussion at a public workshop; and a public workshop on the draft Wet-Weather TMDL was held on June 27, 2002 at a regularly scheduled Regional Board meeting.
13. A final draft of the Wet-Weather TMDL along with a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action. Regional Board staff responded to oral and written comments received from the public; and the Regional Board

held a public hearing on September 26, 2002 to consider adoption of the Wet-Weather TMDL.

14. The Regional Board continued the item from the September 26, 2002 Board meeting to the December 12, 2002 Board meeting to give staff time to make revisions based on public comments and Board discussion at the September 26, 2002 Board meeting. Specifically, the Board wanted an implementation program that was reasonable and as short as practicable given the testimony on impairments to the REC-1 beneficial use.
15. The Regional Board recognizes that there are two broad approaches to implementing the TMDL. One approach is an integrated water resources approach that takes a holistic view of regional water resources management by integrating planning for future wastewater, storm water, recycled water, and potable water needs and systems; focuses on beneficial re-use of storm water, including groundwater infiltration, at multiple points throughout a watershed; and addresses multiple pollutants for which Santa Monica Bay or its watershed are listed on the CWA section 303(d) List as impaired. The other approach is a non-integrated water resources approach.

Some responsible jurisdictions and agencies have indicated a preference to take an integrated water resources approach to realize the benefits of re-using storm water to preserve local groundwater resources and to reduce reliance on imported water. The Regional Board recognizes that an integrated water resources approach not only provides water quality benefits to the people of the Los Angeles Region, but also recognizes that the responsible jurisdictions implementing this TMDL can serve a variety of public purposes by adopting an integrated water resources approach. An integrated water resources approach will address multiple pollutants, and as a result, responsible jurisdictions can recognize cost-savings because capital expenses for the integrated approach will implement several TMDLs that address pollutants in storm water. In addition, jurisdictions serve multiple roles for their citizenry, and an integrated approach allows for the incorporation and enhancement of other public goals such as water supply, recycling and storage; environmental justice; parks, greenways and open space; and active and passive recreational and environmental education opportunities.

The Regional Board acknowledges that a longer timeframe is reasonable for an integrated water resources approach because it requires more complicated planning and implementation such as identifying markets for the water and efficiently siting storage and transmission infrastructure within the watershed(s) to realize the multiple benefits of such an approach.

16. Therefore, after considering testimony, the Regional Board directed staff to adjust the implementation provisions of the TMDL to allow for a longer implementation schedule (up to 18 years) only when the responsible jurisdictions and agencies clearly demonstrate their intention to undertake an integrated water resources approach and justify the need for a longer implementation schedule. In contrast, testimony indicated that a shorter implementation schedule (up to 10 years) is reasonable and practicable for non-integrated approaches because the level of planning is not as complicated.
17. A revised draft of the Basin Plan amendment and Tentative Resolution were circulated 45 days preceding Board action. Regional Board staff responded to oral and written comments received from the public on the revised draft. The Regional Board held a second public hearing on December 12, 2002 to consider adoption of the Wet-Weather TMDL.

18. On October 25, 2001, the Regional Board adopted Resolution 2001-018 establishing revised bacteriological water quality objectives for the Water Contact Recreation (REC-1) beneficial use, and the TMDL is intended to accompany and to implement the revised water quality objectives. The State Water Resources Control Board approved the Regional Board's Basin Plan amendment on July 18, 2002 in State Board Resolution 2002-0142, the Office of Administrative Law approved it on September 19, 2002 in OAL File No. 02-0807-01-S, and the US EPA approved it on September 25, 2002.
19. Under certain circumstances and through the TMDL development process, the Regional Board proposes to implement the aforementioned revised bacteria objectives using either a 'reference system/anti-degradation approach' or a 'natural sources exclusion approach.' As required by the CWA and Porter-Cologne Water Quality Control Act, the Basin Plan includes beneficial uses of waters, water quality objectives to protect those uses, an anti-degradation policy, collectively referred to as water quality standards, and other plans and policies necessary to implement water quality standards. This TMDL and its associated waste load allocations, which will be incorporated into relevant permits, are the vehicles for implementation of the bacteria standards as required under Water Code section 13242.
20. Both the 'reference system/anti-degradation approach' and the 'natural sources exclusion approach' recognize that there are natural sources of bacteria that may cause or contribute to exceedances of the single sample objectives.
21. The Regional Board's intent in implementing the bacteria objectives using a 'reference system/anti-degradation approach' is to ensure that bacteriological water quality is at least as good as that of a reference site and that no degradation of existing bacteriological water quality is permitted where existing bacteriological water quality is better than that of a reference site. The Regional Board's intent in implementing the bacteria objectives using a 'natural sources exclusion approach' is to ensure that all anthropogenic sources of bacteria are controlled such that they do not cause an exceedance of the single sample objectives. These approaches are consistent with state and federal anti-degradation policies (State Board Resolution No. 68-16 and 40 C.F.R. 131.12), while acknowledging that it is not the intent of the Regional Board to require treatment or diversion of natural coastal creeks or to require treatment of natural sources of bacteria from undeveloped areas. While treatment and diversion of natural sources may fully address the impairment of the water contact recreation beneficial use, such an approach may adversely affect valuable aquatic life and wildlife beneficial uses in the Region.
22. For the Wet-Weather and Dry-Weather Bacteria TMDLs at Santa Monica Bay beaches, Leo Carrillo Beach and its associated drainage area, Arroyo Sequit Canyon, were selected as the local reference system until other reference sites or approaches are evaluated and the necessary data collected to support the use of alternative reference sites or approaches when the TMDL is revised four years after the effective date. Leo Carrillo Beach was selected as the interim reference site because it best met the three criteria for selection of a reference system. Specifically, its drainage is the most undeveloped subwatershed in the larger Santa Monica Bay watershed, the subwatershed has a freshwater outlet (i.e., creek) to the beach, and adequate historical shoreline monitoring data were available. It is the intent of the Regional Board to re-evaluate the use of Leo Carrillo Beach due to potential problems arising from the heavy recreational use of the beach and the close proximity of two campgrounds.
23. Northern Bay beach monitoring sites are fewer in number and provide less comprehensive data than the extensive shoreline monitoring network elsewhere in Santa Monica Bay.

24. The numeric targets in this TMDL are not water quality objectives and do not create new bases for enforcement against dischargers apart from the water quality objectives they translate. The targets merely establish the bases through which load allocations and wasteload allocations (WLAs) are calculated. WLAs are only enforced for a discharger's own discharges, and then only in the context of its National Pollutant Discharge Elimination System (NPDES) permit, which must be consistent with the assumptions and requirements of the WLA. The Regional Board will develop permit requirements through a subsequent permit action that will allow all interested persons, including but not limited to municipal storm water dischargers, to provide comments on how the waste load allocations will be translated into permit requirements.
25. The Regional Board has the authority to authorize compliance schedules through the basin planning process. In this Basin Plan amendment, the Regional Board establishes a schedule for implementation that affords the responsible jurisdictions and agencies up to ten or eighteen years, depending on the implementation approaches pursued, to implement this Wet-Weather Bacteria TMDL.
26. Previously, the Regional Board adopted a Dry-Weather Bacteria TMDL for the Santa Monica Bay Beaches. The Dry-Weather TMDL includes implementation provisions contained in Table 7-4.3 of the Basin Plan, including a provision to reconsider two years after the effective date the Dry-Weather TMDL and specifically the reference beach(es) used. Because that effort overlaps with reconsideration of the reference beach(es) anticipated by this Wet-Weather TMDL, the Regional Board proposes to coordinate the reconsiderations of the reference beach approach to assure efficiency and consistency in implementing the two Santa Monica Beaches TMDLs.
27. The basin planning process has been certified as functionally equivalent to the California Environmental Quality Act requirements for preparing environmental documents (Public Resources Code, Section 21000 et seq.) and as such, the required environmental documentation and CEQA environmental checklist have been prepared.
28. The proposed amendment results in no potential for adverse effect (de minimis finding), either individually or cumulatively, on wildlife.
29. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
30. The Basin Plan amendment incorporating a TMDL for bacteria at Santa Monica Bay beaches must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the USEPA. The Basin Plan amendment will become effective upon approval by OAL and USEPA. A Notice of Decision will be filed.

**THEREFORE**, be it resolved that pursuant to Section 13240 and 13242 of the Water Code, the Regional Board hereby amends the Basin Plan as follows:

- 1 Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapters 3 and 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements of the Santa Monica

Bay Beaches Bacteria TMDL for wet weather and to implement the water quality objectives for bacteria set to protect the water contact recreation beneficial use.

Pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment B hereto, to amend Table 7-4.3 of the Santa Monica Bay Beaches Bacteria TMDL for dry weather to change the date for revision of the TMDL from two years after the effective date to four years after the effective date [of the Wet-Weather TMDL] to achieve consistency in scheduling between the Dry-Weather and Wet-Weather TMDLs.

The Executive Officer is directed to exercise authority under Water Code section 13267, or other applicable law, to require additional monitoring data in the northern Bay beach regions to ensure that wet weather bacteria exposure is adequately quantified before the TMDL is reconsidered in four years.

4. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.

The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.

6. If during its approval process the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
7. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Dennis A. Dickerson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 12, 2002.

ORIGINAL SIGNED BY  
Dennis A. Dickerson  
Executive Officer

**EXHIBIT B**  
**Santa Monica Bay Watershed**  
**Jurisdiction 2 and 3 Representatives**

**Primary Jurisdiction:**

**Jurisdiction 2**

1. City of Los Angeles “PRIMARY JURISDICTION” FOR JURISDICTION TWO  
Watershed Protection Division  
2714 Media Center Drive  
Los Angeles, California 90065  
Party Representative: Wing Tam, P.E., TMDL Implementation Section Head  
[Wtam@san.lacity.org](mailto:Wtam@san.lacity.org)  
Phone No.: (323) 342-1574  
Fax: (323) 342-1511

**Jurisdiction 3**

2. City of Santa Monica, “PRIMARY JURISDICTION” FOR JURISDICTION THREE  
Environmental Programs Division  
200 Santa Monica Pier #K  
Santa Monica, California 90401  
Party Representative: Neal Shapiro, Urban Runoff Management Coordinator  
[Neal-shapiro@santa-monica.org](mailto:Neal-shapiro@santa-monica.org), [www.santa-monica.org /environment](http://www.santa-monica.org/environment)  
Phone No.: (310) 458-8223  
Fax: (310) 393-1279

**Additional Responsible Jurisdictions:**

3. California Department of Transportation, District 07 (Caltrans)  
120 South Spring Street, MS 13  
Los Angeles, California 90012  
Party Representative: Bob Wu, Senior Transportation Engineer  
[Robert\\_wu@dot.ca.gov](mailto:Robert_wu@dot.ca.gov)  
Phone No.: (213) 897-8636  
Fax: (213) 897-0205
4. County of Los Angeles, Watershed Management Division, 11<sup>th</sup> floor  
900 South Fremont Ave.  
Alhambra, California 91803-1331  
Party Representative: Steve Ross, P.E., Watershed Manager  
[sross@ladpw.org](mailto:sross@ladpw.org)  
Phone No.: (626) 458- 4316  
Fax: (626) 457-1526
5. City of El Segundo  
350 Main Street  
El Segundo, California 90245  
Party Representative: Paul Giera, Utility Manager  
[pgiera@elsegundo.org](mailto:pgiera@elsegundo.org)  
Phone No.: (310) 524-2742  
Fax: (310) 322-4070



## EXHIBIT C

### Total Implementation Cost by Municipalities in Jurisdictional Groups 2 & 3 of Santa Monica Bay Watershed

Agency	Jurisdiction 2				Jurisdiction 3				Total Cost
	Square Miles	Acres	% of Area	\$/Agency	Square Miles	Acres	% of Area	\$/Agency	\$/Agency
Santa Monica*	0.40	256	1.41	\$7,796	7.2875	4,664	51.71	\$118,944	\$126,739
El Segundo*	1.76	1,124	6.20	\$34,223	0	0	0.00	\$0	\$34,223
Los Angeles*	25.24	16,154	89.11	\$491,902	6.73125	4,308	47.77	\$109,865	\$601,767
LA County*	0.68	435	2.40	\$13,246	0	0	0.00	\$0	\$13,246
Caltrans**	0.25	159	0.88	\$4,833	0.073	47	0.52	\$1,191	\$6,025
<b>Totals</b>	28.3237	18,127	100	\$552,000	14.0918	9,019	100	\$230,000	\$782,000

\* Based on LARWQCB TMDL revised table 1-6-04

\*\*Provided by Caltrans

Original cost of Implementation Plan for Group 2: \$552k

Cost of Implementation Plan for Group 3 is: current cost - original cost (\$782k - \$552k) = \$230k

Total cost of Implementation Plan: \$782k

Revised 1-6-04

07-LA-1-PM 17.4/23.49  
07-LA-107-pm 2.45/3.49  
Santa Monica Bay Beaches Bacteria  
TMDL Implementation Plan Development  
Group 5 and 6  
District Agreement No. 07-4705  
EA 910204

## **MEMORANDUM OF AGREEMENT**

### **SANTA MONICA BAY BEACHES BACTERIA TMDL IMPLEMENTATION PLAN DEVELOPMENT JURISDICTIONAL GROUPS FIVE AND SIX**

This Memorandum of Agreement ("MOA") is entered into, effective as of July 1, 2004 when fully executed, by and among the City of Redondo Beach ("Redondo Beach"), a chartered municipal corporation; the City of Manhattan Beach ("Manhattan Beach"), a body corporate and politic; the City of Torrance ("Torrance"), a municipal corporation; the City of Hermosa Beach ("Hermosa Beach"), a body corporate and politic; the City of El Segundo (El Segundo), a general law city; the County of Los Angeles ("County"), a political subdivision of the State of California and the California Department of Transportation ("Caltrans") (individually "Party" and collectively, "Parties"), with respect to the following:

### **RECITALS**

**A. WHEREAS**, on December 12, 2002, the Regional Water Quality Control Board, Los Angeles Region (RWQCB) approved Resolution No. 2002-022, adopting a Total Maximum Daily Load for bacteria during wet weather for Santa

Santa Monica Bacteria TMDL  
Jurisdictional Groups 5 and 6  
Implementation Plan Development  
Memorandum of Agreement

Monica Bay Beaches ("Bacteria TMDL"), a true and correct copy of which is attached as Exhibit A hereto and incorporated herein; and

**B. WHEREAS**, on June 19, 2003 the United States Environmental Protection Agency approved the TMDL, and on July 15, 2003 the RWQCB issued a letter stating that the "Effective Date" of the Bacteria TMDL July 15 , 2003; and

**C. WHEREAS**, the Bacteria TMDL identifies several "Jurisdictional Groups" within the Santa Monica Bay watershed, with each "Jurisdictional Group" having a "Primary Jurisdiction," defined to be the jurisdiction comprising greater than fifty percent (50%) of the Jurisdictional Group's watershed area; and

**D. WHEREAS**, the City of Manhattan Beach is the "Primary Jurisdiction" for Jurisdictional Group Five and El Segundo, Hermosa Beach, Los Angeles County and Caltrans are "additional responsible jurisdictions and agencies" in "Jurisdictional Group Five"; and

**E. WHEREAS**, the City of Redondo Beach is the "Primary Jurisdiction" for Jurisdictional Group Six and Hermosa Beach, Manhattan Beach, Torrance, County of Los Angeles, and Caltrans are "additional responsible jurisdictions and agencies" in "Jurisdictional Group Six"; and

**F. WHEREAS**, the Parties recognize that the Bacteria TMDL is not self executing and has not been incorporated into the National Pollution Discharge Elimination System ("NPDES") permit for Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Los Angeles, and the Incorporated Cities Therein Except the City of Long Beach dated December 13, 2001 ("NPDES Permit"), in the manner required by law to be enforceable; and

**G. WHEREAS**, the Parties, nonetheless, desire to enter into a cooperative agreement to voluntarily develop and submit to the RWQCB a draft written report by 20 (twenty) months after the Effective Date of the Bacteria TMDL, and a final written report (collectively "Implementation Plan") by two (2) years after the Effective Date of the Bacteria TMDL outlining how each Party intends to cooperatively achieve the goals of the Bacteria TMDL.

**H. WHEREAS**, the Parties desire to submit an Implementation Plan that may adopt the "integrated water resources approach" ("IWR Approach") identified in the Bacteria TMDL or an "end of pipe" ("EOP") approach, wherever technically, economically, and politically feasible, which will provide for final compliance within no more than 18 (eighteen) years after the effective date of the Bacteria TMDL; and

**I. WHEREAS**, the Parties desire to enter into this MOA voluntarily to, among other things: 1) set forth their intent to develop and submit an Implementation Plan that is consistent with the provisions of the Bacteria TMDL; 2) establish the roles of the Parties to prepare and submit an Implementation Plan; and 3) establish a formula to calculate the respective financial share of the costs to be contributed by each Party hereinto develop and prepare the Implementation Plan.

**NOW, THEREFORE**, in consideration of the mutual benefits and representations made herein, the Parties hereby agree as follows:

## **AGREEMENT**

### **ARTICLE I – Purpose of MOA**

1. Purpose of MOA – The Parties voluntarily enter this MOA to cooperatively and voluntarily devise and jointly fund an implementation plan that is consistent with the provisions of the Bacteria TMDL and which shall include the development and submittal of an Implementation Plan, with any incidental documentation necessary to achieve the goals consistent with the Bacteria TMDL. The activities described in this Article I, Section 1, shall be referred to hereinafter as the “Work.”

2. “Maximum Extent Practicable” Standard – Nothing in this MOA, nor the described Work, nor any activity approved or carried out by the Parties hereunder shall be interpreted as a waiver of the position that the maximum effort to be undertaken by the Parties is subject to the “Maximum Extent Practicable” standard set forth in the Clean Water Act.

## **ARTICLE II – Organization**

1 Meetings – The Parties agree that their respective Representatives (as defined below) shall meet, at minimum, once per month to discuss the development, preparation and submittal of the Work (“Work Meetings”). The Parties at Work Meetings shall meet in person, although teleconference meetings may be held upon agreement of the Representatives. The Chair, as defined below, shall prepare and distribute a draft written agenda for each Work Meeting to all Representatives for comments. The Parties shall mutually agree upon a final agenda for each Work Meeting. The agenda shall be distributed at least four (4) business days prior to the date of each Work Meeting to the Representatives, except in the case of a Special Meeting wherein the agenda shall be distributed 24 hours before the Special Meeting. The Chair or any three (3) Parties may call a Special Meeting to discuss urgent issues that require immediate attention or action by the Parties prior to the date of the next Work Meeting. Special Meetings may be held in person or by teleconference. The Parties must be given two (2) days written notice of the Special Meetings as provided by this MOA.

2. Quorum A quorum shall exist if a Work Meeting or Special Meeting is attended in person or via teleconference by at least five (5) Representatives; except however, no quorum shall exist unless one of the Primary Jurisdictions, Manhattan Beach or Redondo Beach, is present. No official or binding action may be taken at any meetings without a quorum.

3. Representatives – Each Party shall appoint one or more representative(s) (“Representative”) authorized to vote that party’s single vote at the Work Meetings or Special Meetings, although other individuals of Party may also attend the meeting the name(s) of the Representative(s) shall be submitted at least two (2) days before the first scheduled Work Meeting. A Party may designate a new Representative(s) to act on its behalf by providing written or electronic mail notice to both Primary Jurisdiction Representatives at anytime thereafter but at least two (2) days before the next Work Meeting. A Representative from each Party shall make every effort to attend every Work Meeting and Special Meeting. If a Party Representative will be absent from a Work Meeting or Special Meeting that Party may appoint another Party’s Representative to act as its proxy, with full power to vote as directed by the absent Party. Any such proxy arrangement shall be memorialized in writing or by electronic mail transmitted to both Primary Jurisdictions at least 24 hours before the date of the Work or Special Meeting. Proxy representation shall be counted in determining a quorum.

4. Chair – The two (2) Primary Jurisdictions shall act as Co-chairs, with the position of Chair rotating among the two Co-chairs on a month to month basis. In the event the Chair, for any particular month, is unable to perform its responsibilities, the Co-chair shall become Chair. The Primary Jurisdictions shall jointly sign all written communications made on behalf of all Parties. All written communications shall be copied to all Parties to this MOA.

5. Information Sharing – The Parties mutually agree to share, to the extent not otherwise prohibited by law or by legal or trade secret privilege, all information required to develop, prepare and submit documents required for the Work, including monitoring data, CADD and GIS or other electronic data. Such sharing shall be subject to any applicable license agreements or other restrictions. All data shared among the Parties shall be provided “as is” and without warranties as to accuracy or as to any other characteristic, whether express or implied. The intent of this data-sharing provision is to facilitate the Work. The Parties agree not to use such data for tasks not related to the Work.

6. Voting – Any action taken at any Work Meeting or Special Meeting shall be approved by a 2/3 majority vote of the Representatives attending the meeting or properly noticed proxy, and each said approval vote must include an affirmative vote by one (1) of the Primary Jurisdictions to be effective and binding. Each Party shall be bound by any action approved by the Parties at a Work Meeting or Special Meeting, whether that Party was present or absent from the Work Meeting or Special Meeting. Each party shall have one vote.

7. Subcommittees – The Representatives acting in a Work Meeting or Special Meeting may appoint such subcommittees as they believe appropriate and useful to conduct the work set forth in this MOA.

8. Minutes – The Chair shall select a secretary to draft and distribute written minutes of all Work and Special Meetings to the Party Representatives at the addresses designated below within five (5) work days after each Work or Special Meeting.



### ARTICLE III – FUNDING AND CONTRACTING

1 Funding Agreements – Any funds contributed for the Work, including contributions for consultants or other services as agreed upon by the Parties, shall be calculated using the cost-sharing formula described in Exhibit B. All funding shall apply to the Work, and shall not be used to implement the Work. The total contribution by all of the Parties shall not exceed \$185,000 unless otherwise agreed to by the Parties by written amendment of this MOA. Caltrans funding encumbered under this MOA is evidenced by the signature of its District Budget Manager certifying as to funds in the maximum sum of \$1,508 having been allocated and encumbered to pay Caltrans' share of the Work costs. Any cost to be invoiced above this sum will require an amendment to this MOA.

2 Contracting – Should the Parties agree to obtain goods or services from a Third Party for the development, preparation and submittal of the Work, the Parties shall agree upon one Party to enter into an agreement with the Third Party. Said Party will be the "Contracting Agency." The Parties agree that Redondo Beach be the Contracting Agency. The Third Party contract shall incorporate the contracting requirements and policies of Redondo Beach that may be attached to the Request for Proposal (RFP). The Third Party contract shall recite, however, that it is for the benefit of the Parties, and the Third Party shall be paid solely from the contributions from the Parties in the amounts set forth in Exhibit B. The Third Party contract shall require the Third Party to look solely to Redondo Beach for payment of the funds contributed by the Parties and look solely to Redondo Beach to resolve any issues regarding that contract. The

Scope of Work of Third Party contract shall be presented to the Representatives for review and approval prior to execution of the contract. The Third Party contract shall also provide that it may be terminated upon sixty (60) days written notice by Redondo Beach, and shall otherwise be in compliance with Redondo Beach's regulations, ordinances and policies. No Party shall be obligated hereunder to bring any action against the Third Party for breach of its obligations under the contract

3      Supervision of Third Party –Redondo Beach shall be responsible for coordinating the activities of Third Party, including coordinating the scope of work to be performed by the Third Party. Redondo Beach shall forward all invoices submitted by the Third Party to the Representatives for review and comment.

4      Payment – Upon contract execution with a Third Party, Redondo Beach shall invoice each Party for its respective share of the contracts total costs based on the formula described in Exhibit B. Each Party shall pay that invoice within sixty (60) days of receipt. Any change orders costs will be invoiced separately up to the maximum amount shown in Exhibit B

5      Caltrans Budget Contingency – All obligations of Caltrans under the term of this Agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission. This MOA has been signed by Caltrans before ascertaining the availability of federal or state legislative appropriation of funds, for the mutual

benefit of the Parties in order to avoid program and fiscal delays that would occur if the MOA was executed after that determination was made.

This MOA is valid and enforceable as to Caltrans, as if sufficient funds have been made available to Caltrans by the United States Government or California State Legislature for the purposes set forth in this MOA. If the United States Government or the California State Legislature does not appropriate sufficient funds for Caltrans to participate in this MOA, this MOA may be amended in writing by the Parties to reflect any agreed upon reduction in the percentage of funds contributed by Caltrans to continue its participation in this MOA. Caltrans however has the option to withdraw from this MOA in the event sufficient funds are not appropriated for Caltrans.

Should Caltrans exercise its option to withdraw from this MOA, Caltrans shall remain responsible for its share of liability, if any, incurred while participating in this MOA.

#### **ARTICLE IV – GENERAL PROVISIONS**

1       Term of MOA – This MOA shall continue in effect until the earlier of July 1, 2006 or six (6) months after the Implementation Plan is approved in writing by the RWQCB, unless earlier terminated or extended by agreement of all Parties to the MOA. A Party may withdraw from this MOA ("Withdrawing Party") by sending a letter to each Party including the Primary Jurisdictions stating that Party's decision to withdraw from this MOA. However, prior to withdrawing, the Withdrawing Party must be current on all financial obligations resulting from this MOA. Once the Party withdraws from the MOA it will no longer be a participant

in the Work prepared under this MOA. Further, the Withdrawing Party forfeits any funds contributed prior to withdrawal from the MOA. Withdrawal is effective sixty (60) days after the date of written notice to the Primary Jurisdictions. If, however, the Withdrawing Party is Redondo Beach, withdrawal is effective sixty (60) days after executing an assignment of the Third Party contract to another Party to the MOA to serve as the new Contracting Agency.

2. Amendment – This MOA may be amended in writing in the same manner the MOA was entered.

3. Authority – Each of the persons signing below on behalf of a Party represents and warrants that they are authorized to sign this MOA on behalf of such Party.

4. Counterparts - This MOA may be signed in counterparts, and each counterpart shall be deemed an original, but all of which shall constitute one and the same instrument. A copy of all signature pages is attached hereto as Exhibit C and made a part of this Agreement.

5. Indemnification - Each Party shall indemnify, defend, and hold harmless each of the other Parties, including their Special Districts, elected and appointed officers, agents and employees, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the acts arising from and/or relating to this MOA.

6. Mutual Grant of Entry- During the term of this MOA, each Party hereby grants to every other Party the right of access and entry to all storm

drains, creeks, beaches, and existing monitoring stations at beaches subject to this MOA (the "Property") to achieve the purposes of this MOA. Prior to exercising said right of entry, the entering Party shall provide written notice to the Party who owns and/or retains jurisdiction over the Property. For the purposes of this provision, written notice shall be delivered to the Party Representative at least 48 hours in advance of entry and the Party seeking entry must receive confirmation to proceed from the Party that owns and/or retains jurisdiction over the Property before entering the Property. The Parties shall indemnify, defend and hold harmless each other Party, their Special Districts, elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert fees), arising from or connected with the entry onto the Property. This indemnification is in addition to the other indemnities made herein.

7. Access to Caltrans Facilities- Any Party intending to enter onto a Caltrans right of way shall first make a written request to the Caltrans party listed in Exhibit B; identifying the site location, extent of access by persons (and equipment if any), dates and times of entry, as well as an explanation of the purpose of that entry. Caltrans will thereafter determine, within ten (10) working days, if that entry will be allowed without a formal encroachment permit issued by the District Permit Engineer as an authorized presence of non-Caltrans parties not interfering with or threatening the safety of the traveling public or the integrity of the Caltrans' infrastructure. In such case, Caltrans will condition that right of

entry on the accompaniment of a Caltrans representative who shall be empowered to restrict or limit the access of those permittees as deemed necessary, in the sole discretion of Caltrans. Where adverse impacts to traffic or the traveled way can be anticipated by Caltrans, Caltrans may require the applicant Party to submit a formal encroachment permit application, to be filed and completed together with Traffic Control Plans when necessary (which must be prepared by or under the supervision of a traffic engineer licensed in the State of California) with the District Permit Engineer. An encroachment permit may require as much as six (6) weeks to be issued depending upon the extent of coordination and development of traffic controls required for that access.

8. Notices— Any notices, bills, invoices, or reports relating to this MOA, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representative of the Party at the addresses set forth herein below. Written notice shall include notice delivered via email. A notice shall be deemed to have been received on (a) the day of delivery, if delivered by hand during regular business hours or by confirmed facsimile or by confirmed email; or (b) on the third business day following deposit in the United States mail, postage prepaid to the addresses set forth herein.

9. Relationship of the Parties- The Parties are, and shall at all times remain as to each other, wholly independent entities. No Party to this MOA shall have power to incur any debt, obligation, or liability on behalf of any other Party except as expressly provided by this MOA. No employee, agent, or officer of a

Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.

10. Governing Law – This MOA shall be governed, interpreted, construed and enforced in accordance with the law of the State of California.

11 Severability- If any provision of this MOA shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of this MOA shall not be affected and this MOA shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this MOA.

IN WITNESS WHEREOF, the Parties hereto have signed this MOA on the date afterwards indicated.

**City of Manhattan Beach**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Geoff Dolan, City Manager

Attest: \_\_\_\_\_ Approved as to Form: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Liza Tamura, City Clerk Robert V. Wadden, City Attorney

Mailing Address: City of Manhattan Beach  
Public Works Department  
3621 Bell Ave.  
Manhattan Beach, CA 90266

**City of Hermosa Beach**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Art Yoon, Mayor

Attest: \_\_\_\_\_ Approved as to Form: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Elaine Doerfling, City Clerk Michael Jenkins, City Attorney

Mailing Address: City of Hermosa Beach  
1315 Valley Dr  
Hermosa Beach, CA 90254



**City of Redondo Beach  
a Chartered Municipal Corporation**

By: \_\_\_\_\_  
Gregory C. Hill, Mayor

Date: \_\_\_\_\_

Attest:

Approved as to Form:

By: \_\_\_\_\_  
Sandy Forrest, City Clerk

By: \_\_\_\_\_  
John Eastman, Assistant City Attorney

Mailing Address: City of Redondo Beach  
Engineering and Building Services Department  
415 Diamond Street  
Redondo Beach, CA 90277

**City of Torrance  
a Municipal Corporation**

By: \_\_\_\_\_  
Dan Walker, Mayor

Date: \_\_\_\_\_

Attest:

Approved as to Form:

By: \_\_\_\_\_  
Sue Herbers, City Clerk

By: \_\_\_\_\_  
John L. Fellows, City Attorney

Mailing Address: City of Torrance  
Public Works Department – Engineering Division  
20500 Madrona  
Torrance, CA 90503

**City of El Segundo  
a General Law City**

By: \_\_\_\_\_  
Mary Strenn, City Manager

Date: \_\_\_\_\_

Attest:

Approved as to Form:  
Mark D. Hensley, City Attorney

By: \_\_\_\_\_  
Cindy Mortesen, City Clerk

By: \_\_\_\_\_  
Karl H. Berger, Assistant City Attorney

Mailing Address: City of El Segundo  
Public Works Department  
350 Main Street  
El Segundo, CA 90245

**COUNTY OF LOS ANGELES**  
**Acting for itself and on behalf of the**  
**Los Angeles County Flood Control District**

By: \_\_\_\_\_  
Chair, Board of Supervisors

Date:


Attest:

Approved as to Form:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Board of Supervisors

OFFICE OF THE COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy

By:  \_\_\_\_\_  
Deputy

Mailing Address: Los Angeles County  
Department of Public Works  
Watershed Management Division,  
11th Floor  
900 South Fremont St.  
Alhambra, CA 91803

**STATE OF CALIFORNIA**

**Department of Transportation**

**Tony V. Harris**  
**Director of Transportation, Acting**

By: \_\_\_\_\_  
Douglas R. Failing  
District Director

Date: \_\_\_\_\_

Approved as to Form & procedure:

Certify as to funds:

By: \_\_\_\_\_  
William B. Bassett  
Attorney

By: \_\_\_\_\_  
District Budget Manager

Certify as to Financial Terms and Conditions:

By: \_\_\_\_\_  
Accounting Administrator

Address: California Department of Transportation  
District 07  
120 South Spring Street, MS 13  
Los Angeles, California 90012  
Attention: Bob Wu

**Exhibit A**

**Copy of  
Santa Monica Bay Beaches Bacterial  
Total Maximum Daily Load**

**Resolution No. 2002-022 (6 pages)  
Attachment A (17 pages)  
Attachment B (1 page)**

## Exhibit B Cost Sharing Formula

All Parties agree to share the cost of preparing the draft and final implementation plan for Jurisdictional Groups 5 & 6 on a tributary area basis.

The following table shows cost sharing distribution and maximum contribution amount:

Jurisdiction	Tributary Area (acres)	Contribution Percentage	Maximum Contribution Amount
Manhattan Beach	2023	24.991%	\$46,233
Hermosa Beach	901	11.130%	\$20,591
Redondo Beach	2623	32.403%	\$59,946
Torrance	2289	28.277%	\$52,312
El Segundo	21	0.259%	\$479
County of Los Angeles	172	2.125%	\$3,931
Caltrans	66	0.815%	\$1,508
<b>Total</b>	<b>8095</b>	<b>100.000%</b>	<b>\$185,000</b>

P:\wmpub\BMD Watershed\Ross\South SMB\Signed\_MOA IMPLEMENT w Caltrans minor mods.doc

Santa Monica Bacteria TMDL  
Jurisdictional Groups 5 and 6  
Implementation Plan Development  
Memorandum of Agreement